

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BOBBY FRANCIS LOWRY,

Plaintiff,

vs.

LYNN GUYER,

Defendant.

CV 19–40–H–BMM–JTJ

ORDER

Plaintiff Bobby Francis Lowry (“Lowry”), a pro se prisoner proceeding without counsel, filed a petition seeking a writ of habeas corpus. (Doc. 1.) Lowry was sentenced to the Montana State prison for five years following the entry of an *Alford* plea to the offenses of Promotion of Prostitution and Partner or Family Member Assault. (Doc. 3 at 2.)

Lowry twice applied for a transfer to New Mexico under Interstate Corrections Compact (“ICC”). *Id.* The New Mexico Department of Corrections (“DOC”) denied both of Lowry’s requests. *Id.* Lowry alleges that the New Mexico DOC violated the Privileges and Immunities Clause of the Constitution by denying his ICC requests to be transferred to New Mexico. (Doc. 1 at 3.)

United States Magistrate Judge John Johnston entered his Order and Findings and Recommendations in this matter on June 17, 2019. (Doc. 3.) Judge

Johnston determined that because Lowry previously filed a federal habeas petition challenging the denial of his ICC transfer, this Court may not review his present petition. (Doc. 3 at 3.) The Court may not review Lowry's second petition unless and until he obtains leave from the Ninth Circuit Court of Appeals to file a successive petition. *Id.* Judge Johnston recommended that Lowry's petition (Doc. 1) be dismissed for lack of jurisdiction and that a certificate of appealability be denied. (Doc. 3 at 5.)

Lowry timely filed an objection on July 8, 2019. (Doc. 4.) Lowry is entitled to de novo review of those findings and recommendations to which he specifically has objected. 28 U.S.C. § 636(b)(1)(C). Absent specific objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Lowry's objection presents a reargument of the same allegations that he brought forth in his original petition. (Doc. 1.) Lowry fails to present a legal argument and supporting authority to any part of Judge Johnston's Findings and Recommendations. Therefore, the Court reviews Judge Johnson's Findings and

Recommendations for clear error. The Court finds no clear error in Judge Johnston's Findings and Recommendations.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 3) are **ADOPTED IN FULL**.

IT IS FURTHER ORDERED that Lowry's Petition is **DISMISSED** for lack of jurisdiction.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter by separate document a judgement of dismissal.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

DATED this 31st day of July, 2019.



Brian Morris
United States District Court Judge